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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 115 63

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,

Petitioners,

vs.

THE UNITED STATES.

MEMORANDUM AMICUS CURIAE, OF BERT H. MILLER, ATTORNEY GENERAL OF THE STATE OF IDAHO IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BERT H. MILLER,
Amicus Curiae.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 915

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,

Petitioners,

vs.

THE UNITED STATES,

Respondent.

MEMORANDUM AMICUS CURIAE, OF BERT H. MILLER, ATTORNEY GENERAL OF THE STATE OF IDAHO IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Bert H. Miller, Attorney General of the State of Idaho, respectfully files this memorandum, *amicus curiae*, in support of the petition for certiorari to the Court of Claims.

The main body of petitioner Indians reside in Idaho. Since their lands have been taken from them they do not, as bands, have any fixed domicile at the present time. Some have been permitted to take up their abode on the Fort Hall Reservation, which by Executive Order of June 14, 1867 (I Kapp. 837) was set apart for the Boise and Bruneau bands of Shoshones, and by Executive Order of July 30,

1869 (1 Kapp. 839) extended so as to include the Bannock Indians.* Others are scattered in small groups throughout Idaho.

The Eastern Shoshones entered into a treaty with the United States on July 2, 1863 (18 Stat. 685). By this treaty the Eastern Shoshones granted certain rights of way to the United States over their land, etc., and set forth certain lands claimed by the Indians. On July 30, 1863 (13 Stat. 663), the petitioner Indians entered into a similar treaty with the United States which incorporated the provisions of the Eastern Shoshone treaty and also set forth certain land claimed by the Northwestern Shoshones.

On the part of the United States, it was contemplated that additional treaties would be entered into by which these respective divisions of the Shoshone Nation would cede their land to the Government for additional compensation. On July 3, 1886, a subsequent treaty was entered into with the Eastern Shoshones (15 Stat. 673) by which they did surrender the land described in their original treaty in exchange for certain other land in the State of Wyoming. In subsequent litigation between these Indians and the United States over the substituted land they had received in Wyoming, this Court stated that the effect of the original treaty of July 2, 1863 was to set aside a large reservation for the Shoshone Indians (*U. S.* v. *Shoshone Tribe*, 299 U. S. 476, 304 U. S. 111). As respects the petitioner bands (Northwestern Shoshones), no subsequent treaty was ever entered into with them. They never did cede their land to the United States and yet the United States took it from time to time for its own benefit. They have received no compensation therefor.

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* Whether, should the other Tribes object, the Northwestern Shoshones have a right to remain on such Reservation is not here in question and no opinion thereon is expressed.

Not until February 28, 1929 (45 Stat. 1407) did the United States grant petitioner Indians a right to sue for the taking of these lands. That jurisdictional act was passed with this claim in mind. The Secretary of Interior in reporting on S. 710, 70th Congress, which became the jurisdictional act, said (S. Report No. 519, 70th Cong., 1st Sess.):

> "The records show that the northwestern bands of Shoshone Indians were parties to the treaty of July 30, 1863 (13 Stat. 663), by which they affirmed the treaty of July 2, 1863 (18 Stat. 685), between the United States and the eastern band of Shoshone Indians.
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> "The northwestern bands of Shoshones are, under the treaties mentioned, asserting claims against the United States for large tracts of land in northern Utah and Nevada, and in southern Oregon and Idaho, and which lands, they allege, were disposed of by the Government without a cession by or consent of these Indians."

The opinion of the Court below apparently holds that, although the United States by treaty agreed to pay petitioner Indians for certain rights of way over their land, this did not constitute any recognition of petitioners' "Indian title" to that land and that the United States could thereafter disturb or appropriate it without accounting to the Indians therefor, and that, in any event, the jurisdictional bill did not permit the assertion of this claim, although it is the claim expressly asserted before the Committees of Congress when the jurisdictional act was passed. Admitting the inability of the Indians to sue without the consent of the sovereign, the jurisdictional act of February 28, 1929 (45 Stat. 1407) would seem to remove that disability and expressly give the Indians the right to sue for the treaty lands taken from them.

Such a result on similar facts was obtained by the court below with respect to the Indians of Montana, Wyoming,

Nebraska and North and South Dakota. (*Fort Berthold Indians* v. *United States*, 71 C. Cls. 308; *Assiniboine Indians* v. *United States*, 77 C. Cls. 347; appealed dismissed and cert. den. 292 U. S. 606, and *Crow Nation* v. *United States*, 81 C. Cls. 238). The Indians of Idaho are entitled to the same treatment.

It is, therefore, respectfully submitted that the Court should grant petitioner Indians the right to be heard on this important question; to deny them a hearing by the highest Court of the land with respect to the taking of their entire tribal domain would not accord with our sense of fair play, nor inculcate in them the proper respect for their newly granted American citizenship (43 Stat. 253, 84 U. S. C. 601).

Respectfully submitted,

BERT H. MILLER,
Attorney General of the State of Idaho,
Amicus Curiae.